

OPENING

SBA First Wednesday Seminar starts at 9:30 central time

small business opportunities

- ◆ Call-in is 1-866-740-1260, access code 3076601
- ◆ Log-in at www.readytalk.com, same code
- ◆ Support: 800-843-9166. Have access code

federal government contracting



U.S. Small Business Administration



DOORS

Test drive of Ready Talk:

- ◆ Questions: Ask at any time. “Raise your hand” or send a chat.
- ◆ Do not minimize the screen. You will be shut out of system.
- ◆ Put your phone on mute. Unless your office is quiet.
- ◆ We email copies of the PowerPoint upon request.
- ◆ If listening in groups, email participant names and email addresses in Excel for 1102 credit – within a week of training.

***“The Nonmanufacturer Rule – It’s All
About the NAICS code”***



“An investment in knowledge pays the best interest.”

Dwight A. Johnson

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SBA District Offices (www.sba.gov)

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 - Minnesota Nebraska
 - North Dakota Wichita
 - St. Louis South Dakota
-
- Procurement Technical Assistance Centers
http://www.aptac-us.org/new/Govt_Contracting/find.php

*“Tell me and I forget. Teach me and I remember.
Involve me and I learn.”*



Why Small Business?

- Employ 51% of all private sector employees and generate 60% to 80% of net new jobs annually
- Create more than 50% of gross domestic product
- Major source of innovation
- All large were once small
- **Taxpayers**

Why small business? FAR 19.201 General policy

- (a) It is the policy.... to provide maximum practicable opportunities in its acquisitions to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

Such concerns must also have the maximum practicable opportunity to participate as **subcontractors**....

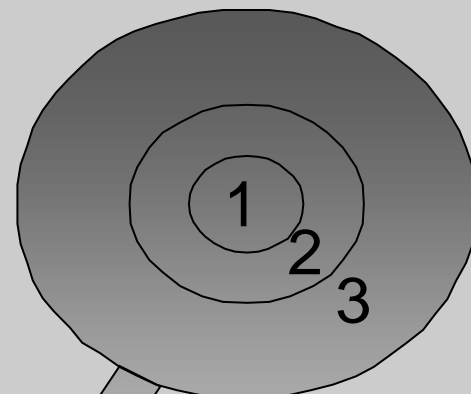
A process of elimination.

Why the Nonmanufacturer Rule?

1. Allow for set-asides for small business manufacturers
2. Allow small dealers and wholesalers (nonmanufacturers) providing the goods of small business to participate in those set-asides
3. Allow for set-asides for small dealers and wholesalers (nonmanufacturers) when no small manufacturers are available through SBA waivers

Unrestricted: Any sort of firm can compete

Friday, October 01, 2010



FY2009 Small Business Procurement Scorecard: “B”

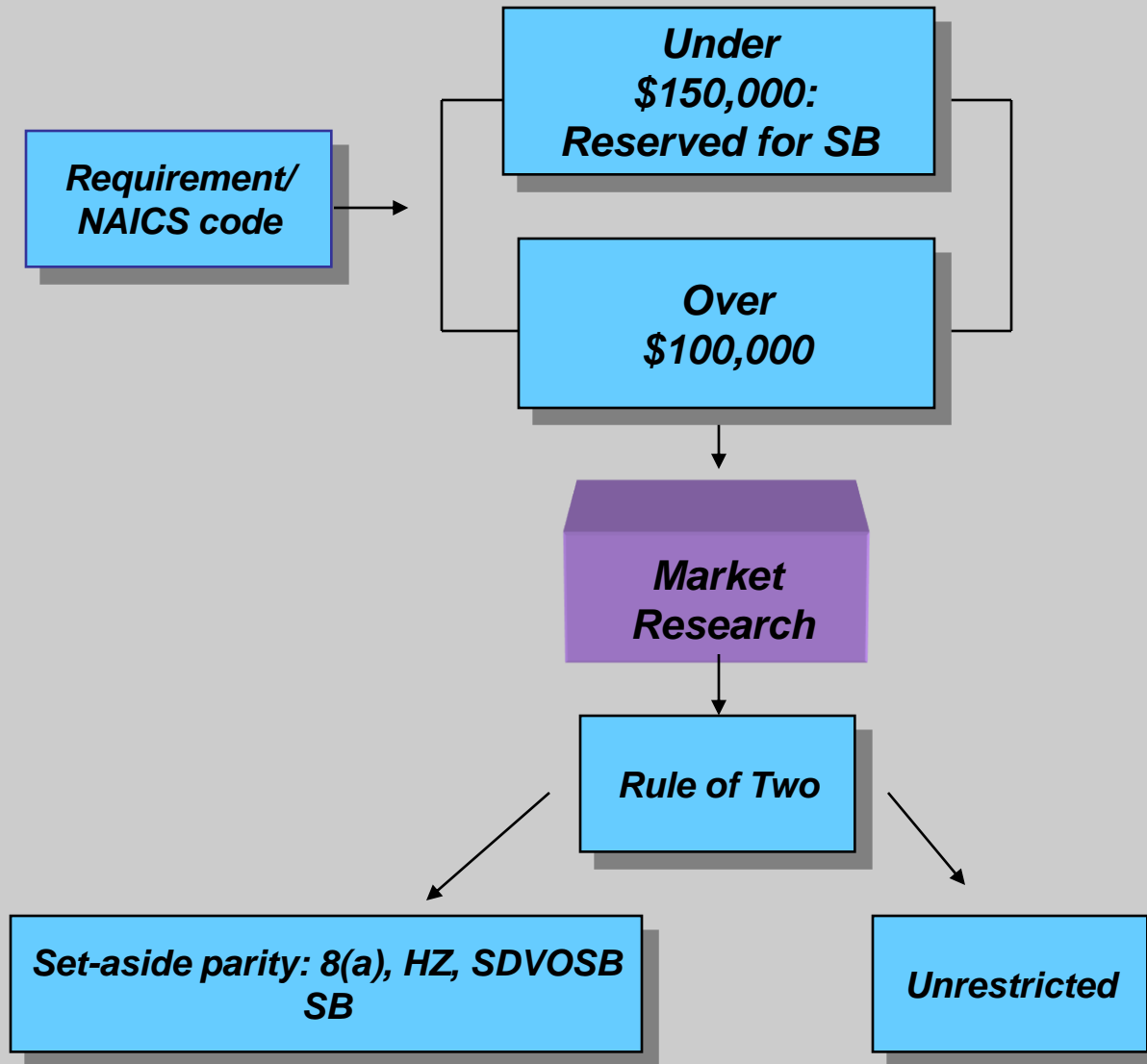
	Goal
Small Business	23%
Small disadvantaged business (8(a))	5%
Women-owned small businesses	5%
HUBZone (Historically Underutilized Business Zone)	3%
Service-disabled veterans	3%

<http://www.sba.gov/aboutsba/sbaprograms/goals/SCORECARD2009.htm>
!

Topics

1. ✓ *Manufacturing NAICS codes and marketing research*
2. *Nonmanufacturer rule – how resellers/wholesalers (nonmanufacturers) fit in*
3. *SBA waivers allow for reseller/wholesaler (nonmanufacturer) set-asides*
4. *Examples*
5. *Whom to contact for what at SBA*

Small business marketing research



FAR 19.102 Size standards.

- a) The SBA establishes small business size standards on an industry-by-industry basis. (See 13 CFR Part 121.)
- (b) Small business size standards are applied by—
 - (1) Classifying the product or service being acquired in the industry whose definition, as found in the.... NAICS.... *best describes the principal nature of the product or service being acquired*;^{*}
 - (2) Identifying the size standard SBA established for that industry; and

^{*}Note: This would not be a wholesaler or reseller

FAR 19.102 Size standards, cont.

- (3) *Specifying the size standard in the solicitation so that offerors can appropriately represent themselves as small or large.*
- (c) *For size standard purposes, a product or service shall be classified in only one industry, whose definition best describes the principal nature of the product or service being acquired even though for other purposes it could be classified in more than one.*

19.303 Determining North American Industry Classification System (NAICS) codes and size standards.

- (a) The contracting officer shall determine the **appropriate NAICS code** and related small business size standard and include them in solicitations above the micro-purchase threshold.

Good link: www.naics.com

Census:

<http://www.census.gov/epcd/naics07/index.html>

Supplies: The manufacturing NAICS code is the “appropriate” code

13 CFR 121.402 (b)....Procurements for supplies must be classified under the appropriate manufacturing NAICS code, not under the wholesale trade NAICS code.

Having the “appropriate” NAICS code up front is the key

- Your focus
- Most common error
- You start off the right way
- Everything else falls into place



Supplies: The manufacturing NAICS code is the “appropriate” code

Use Sector 31 – 33 – Manufacturing

Do not use the nonmanufacturer codes:

Sector 42 – Wholesale Trade

Sector 44 - 45 – Retail Trade

Under the right circumstances (nonmanufacturer rule or NMR), these firms may compete for acquisitions with manufacturing codes

21 Manufacturing Sectors

1. 311, Food Manufacturing
2. 312, Beverage and Tobacco Product Man.
3. 313, Textile Mills
4. 314, Textile Product Mills
5. 315, Apparel Manufacturing
6. 316, Leather and Allied Product Man.
7. 321, Wood Product Man.
Product
8. 322, Paper Manufacturing
9. 323, Printing and Related Support Activities
10. 324, Petroleum and Coal Products Man.
11. 325, Chemical Manufacturing
12. 326, Plastics and Rubber Products
Man.
13. 327, Nonmetallic Mineral Product
Man.
14. 331, Primary Metal Manufacturing
15. 332, Fabricated Metal Product Man.
16. 333, Machinery Man.
17. 334, Computer and Electronic
Man.
18. 335, Electrical Equipment,
Appliance, and Component
Man.
19. 336, Transportation Equipment Man.
20. 337, Furniture and Related Product
Man.
21. 339, Miscellaneous Manufacturing

The “appropriate” code”: Manufacturing NAICS code

- All procurements, not just the NMR
- Market research is driven by NAICS codes – and may be subject to a NAICS code protest. (FAR 19.303)
- But wholesale and retail businesses with these 42, 44, and 45 codes may compete under the special circumstances of the NMR.
- Size standard is 500 employees

Limitations on subcontracting FAR 52.219-14

Services 50% of personnel costs on own employees	Supplies <i>(other than procurement from a nonmanufacturer of such supplies)</i> . 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
General Construction 15% of cost of contract, excluding materials, with its own employees	Special Trade Construction 25% of cost of contract, excluding materials, with own employees

Applies only to small business set-asides over the
Simplified Acquisition Threshold

Limitations on subcontracting FAR 52.219-14

Services 50% of personnel costs on own employees	*Supplies (<u>other than procurement from a nonmanufacturer of such supplies</u>). 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
General Construction 15% of cost of contract, excluding materials, with its own employees	Special Trade Construction 25% of cost of contract, excluding materials, with own employees

*Does not apply to nonmanufacturers

FAR 2.101 Definition of market research:

“Market research” means collecting and analyzing information about capabilities within the market to satisfy agency needs.

Your NAICS-driven market research is complicated

Those in NAICS sectors 42, 44, and 45 list manufacturing
31-33 codes in their capabilities for marketing purposes.

CCR, Dynamic Small Business Search, and ORCA.

“Rule of Two” under \$100,000

19.502-2 Total small business set-asides.

(a) Each acquisition.... that has an anticipated dollar value exceeding \$3,000...., but not over \$100,000.... is automatically reserved exclusively for small business.... and shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery.

- If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm....
- The small business reservation does not preclude the award of a contract with a value not greater than \$100,000 under Subpart 19.8,, or under 19.1305, HUBZone set-aside procedures.

“Rule of Two” over \$100,000

19.502-2 Total small business set-asides.

- (b) The contracting officer shall set aside any acquisition over \$100,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (c) of this subsection); and (2) award will be made at fair market prices....

“Rule of Two” exception – Offering products of different concerns

19.502-2 Total small business set-asides.

(c).... In both of these cases, the contracting officer's determination in paragraph (b)(1) of this subsection or the decision not to set aside a procurement reserved for small business under paragraph (a) of this subsection will be based on;

the expectation of receiving offers from at *least two responsible small businesses, including nonmanufacturers, offering the products of different concerns.**

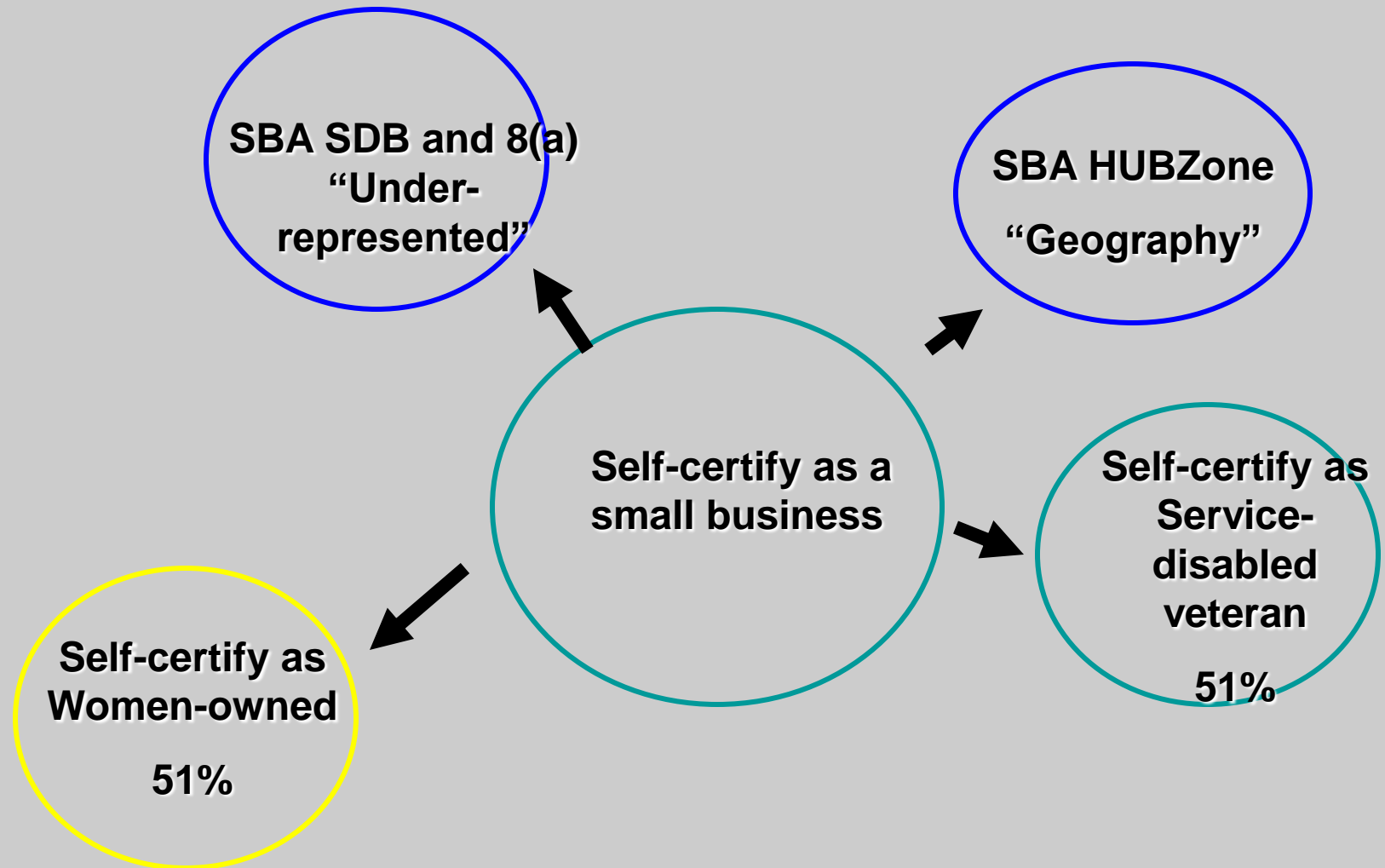
**Note: “Rule of One”: If there is one manufacturer, the acquisition is sole source.*

Rule of two applies to:

- HUBZone
- SDVOSB
- Small business

✓ Goal achievement has no bearing on the rule of two

Certifications



Program parity law: Set-asides determined by market research

8(a) ===== HUBZone ===== Service-Disabled Vet



Small business



Unrestricted competition

Over \$100,000

www.justice.gov/olc/2009/sba-hubzone-opinion082109.pdf

FAR 19.502-5 Insufficient causes for not setting aside an acquisition.

None of the following is, in itself, sufficient cause for not setting aside an acquisition:

- (a) A large percentage of previous contracts for the required item(s) has been placed with small business concerns.
- (d) A period of less than 30 days is available for receipt of offers.
- (e) The acquisition is classified.

FAR 19.502-5 Insufficient causes for not setting aside an acquisition, cont.

- (f) Small business concerns are already receiving a fair proportion of the agency's contracts for supplies and services.
- (g) A class small business set-aside of the item or service has been made by another contracting activity.
- (h) A "brand name or equal" product description will be used in the solicitation.

Brand name or equal purchases

FAR 11.104 Use of brand name or equal purchase descriptions.

- (b) Brand name or equal purchase descriptions must include, in addition to the brand name, a general description of those salient physical, functional, or performance characteristics of the brand name item that an “equal” item must meet to be acceptable for award....

FAR 6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

- (c) Application for brand name descriptions.

FAR 6.303 Justifications.

FAR 52.211-6 Brand Name or Equal.

Market research: Have you done a sources sought?

- Nonmanufacturers (sectors 42, 44-45) list manufacturer (sector 31-22) in their capability and in ORCA.

Topics

- 1. Manufacturing NAICS codes and marketing research*
- ✓ 2. Nonmanufacturer rule – how resellers/wholesalers (nonmanufacturers) fit in*
- 3. SBA waivers allow for reseller/wholesaler (nonmanufacturer) set-asides*
- 4. Examples*
- 5. Whom to contact for what at SBA*

19.001 Definitions. “Nonmanufacturer rule”

“Nonmanufacturer rule” means that a contractor under a small business set-aside or 8(a) contract shall:

- Be a small business under the applicable size standard and
- Shall provide either its own product (NAICS 31-33) or
- That of another domestic small business manufacturing or processing concern (see 13 CFR 121.406). (NAICS 42, 44-45)

See also FAR 19.502-2 (c)

FAR 19.102 Size standards defines “manufacturer and “nonmanufacturer”

- (f) Any concern submitting a bid or offer in its own name, other than on a construction or service contract, that proposes to furnish an end product it did not manufacture (a “nonmanufacturer”), is a small business if it has no more than 500 employees, (NAICS 42, 44-45) and—
- (1) in the case of Government acquisitions set-aside for small businesses, furnishes in the performance of the contract, the product of a small business manufacturer or producer....

The manufacturer of the end product being acquired is the concern that, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into the end product. (NAICS 31-33)

See also

13 CFR 121.406. How does a small business concern qualify to provide manufactured products under small business set-aside or 8(a) contracts? (FAR 19.102)

- (a) General. In order to qualify as a small business concern for a small business set-aside or 8(a) contract to provide manufactured products, an offeror must either:
- (1) Be the manufacturer of the end item being procured (and the end item must be manufactured or produced in the United States) (NAICS 31-33); or

13 CFR 121.406 link:

http://edocket.access.gpo.gov/cfr_2009/janqtr/13cfr121.406.htm

13 CFR 121.406. How does a small business concern qualify to provide manufactured products under small business set-aside or 8(a) contracts? (FAR 19.102)

(b) (1) Nonmanufacturers.

A concern may qualify for a requirement to provide manufactured products as a nonmanufacturer if it:

- (i) Does not exceed 500 employees;
- (ii) Is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied (not a broker);
and
- (iii) Will supply the end item of a small business manufacturer or processor made in the United States, or obtains a waiver of such requirement pursuant to paragraph (b)(3) of this section. (NAICS 42, 44-45)

13 CFR 121.406. How does a small business concern qualify to provide manufactured products under small business set-aside or 8(a) contracts? (FAR 19.102)

(b) (2) For size purposes, there can be only one manufacturer of the end item being acquired.

The manufacturer is the concern which, with its own facilities, performs the primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired.

The end item must possess characteristics which, as a result of mechanical, chemical or human action, it did not possess before the original substances, parts or components were assembled or transformed....

Justification for always using the manufacturer code, (NAICS 31-33);

19.508 Solicitation provisions and contract clauses.

- (c) The contracting officer shall insert the clause at [52.219-6](#), Notice of Total Small Business Set-Aside, in solicitations and contracts involving total small business set-asides.

The clause at [52.219-6](#) with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see [19.102](#)(f)(4) and (5)).

FAR Clause: 52.219-1 Small Business Program Representations

As prescribed in [19.308](#)(a)(1), insert the following provision:

SMALL BUSINESS PROGRAM REPRESENTATIONS (MAY 2004)

- (a)(1) The North American Industry Classification System (NAICS) code for this acquisition is ____ [*insert NAICS code*].
- (2) The small business size standard is _ [*insert size std*].
- (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.
- (d) Notice. (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

FAR Clause: 52.219-6 Notice of Total Small Business Set-Aside.

As prescribed in [19.508](#)(c), insert the following clause:

Notice of Total Small Business Set-Aside (June 2003)

(c) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

FAR Clause: 52.219-6 Notice of Total Small Business Set-Aside.

(Alternate I (Oct 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with [19.502-2\(c\)](#), delete paragraph (c).

Nonmanufacturer rule protests

19.302 Protesting a small business representation or rerepresentation.

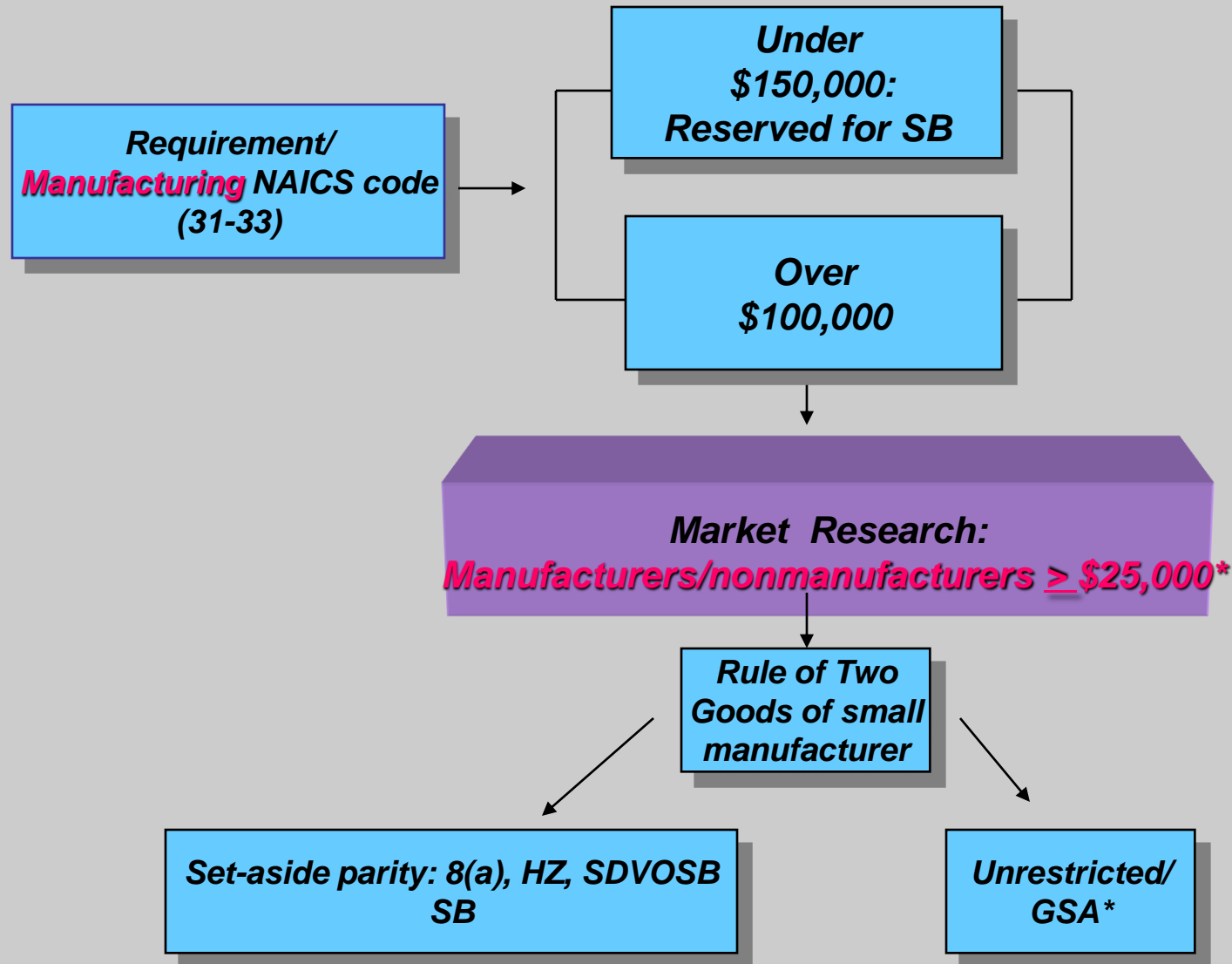
SBA Procurement Center Representative (PCR) position on the NMR

- Provide information
- See that regulations are followed and intervene to correct errors

Decision to go for an individual waiver so that there may be a set-aside is up to the agency

- Agency works directly with SBA Headquarters with no PCR involvement
- Agency call on whether or not to utilize the NMR waiver process

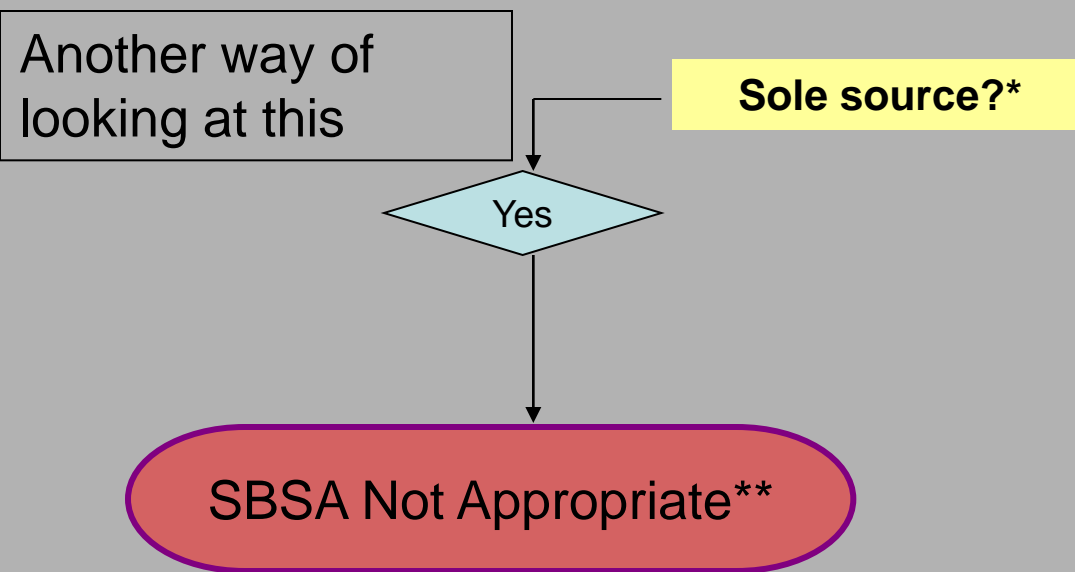
Focus on small business marketing research **for supplies**



*Under \$25K using FAR 13 and GSA are exempt

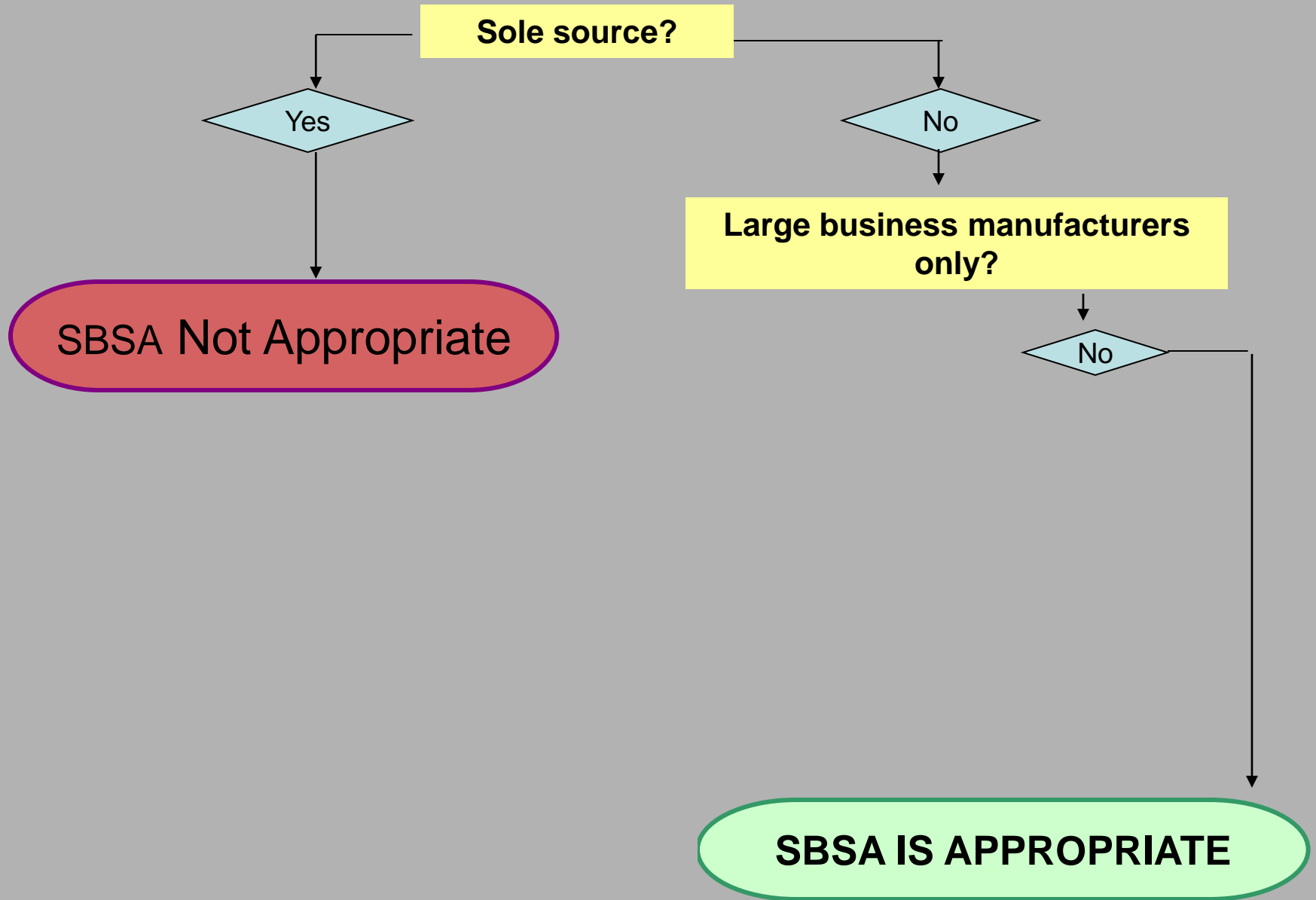
Topics

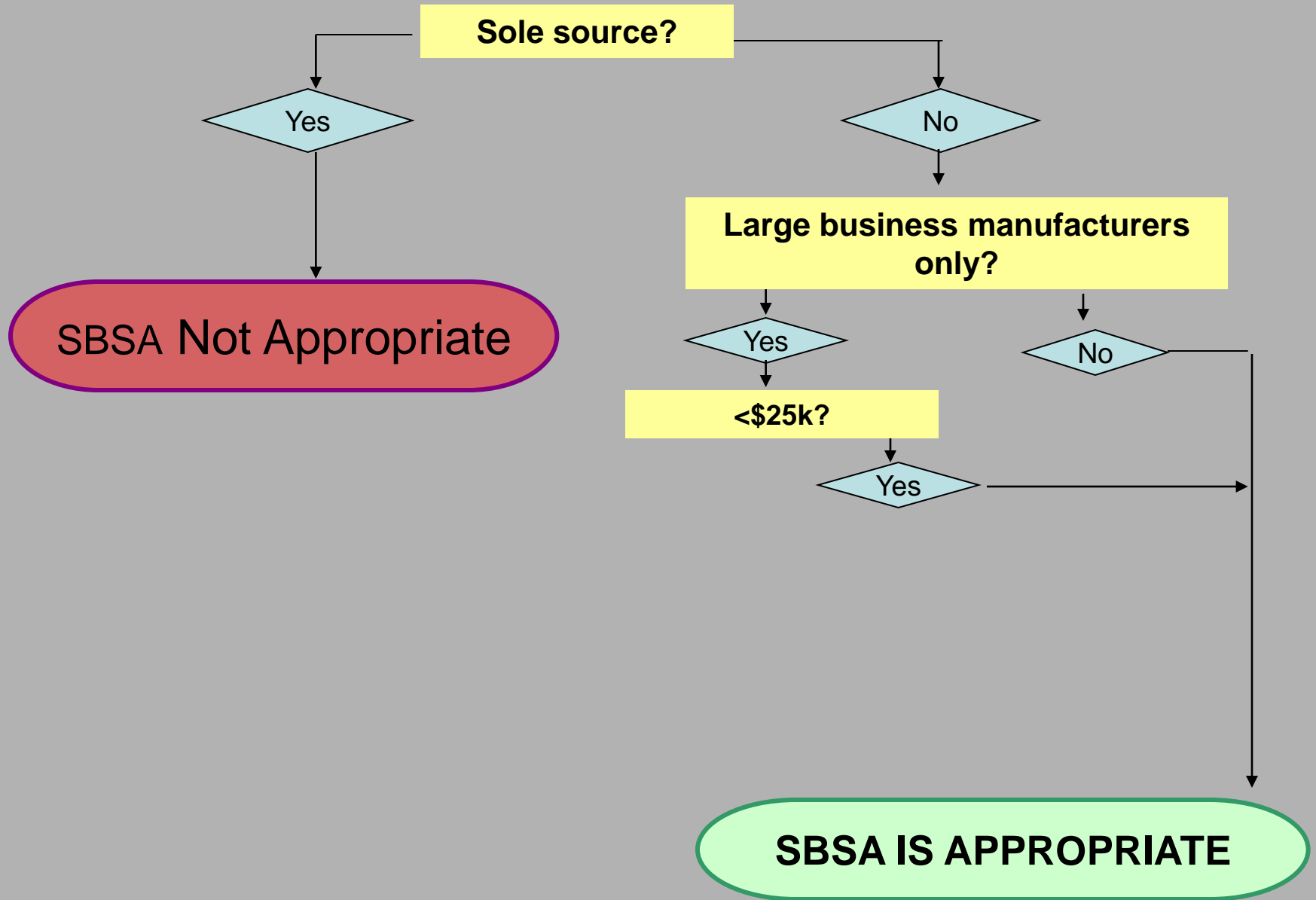
- 1. Manufacturing NAICS codes and marketing research*
- 2. Nonmanufacturer rule – how resellers/wholesalers (nonmanufacturers) fit in*
- ✓ 3. SBA waivers allow for reseller/wholesaler (nonmanufacturer) set-asides*
- 4. Examples*
- 5. Whom to contact for what at SBA*

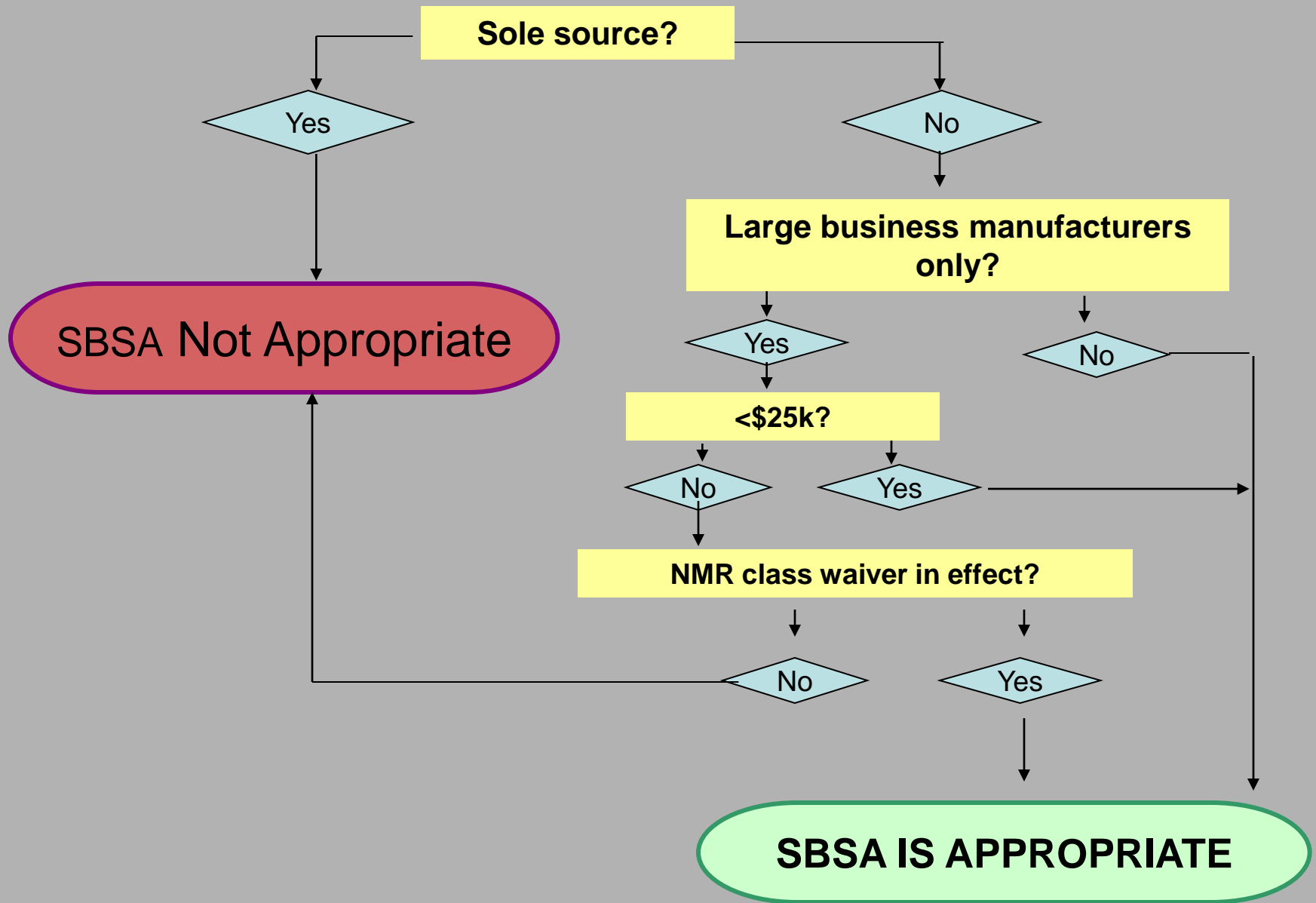


*This speaks to the nature of the product. Is it manufactured rather than provided by more than one source? Is there more than one product that can satisfy the need?

** Restrict solicitations to small business resellers when possible if the product is not sold directly by the manufacturer.







Sources Sought for Small Business Glove and Mitten Manufacturers
Agency: Small Business Administration

NAICS Code: 315 -- Apparel Manufacturing/315992 -- Glove and Mitten Manufacturing

Notice Type: ACTION: Notice of intent to waive the Nonmanufacturer Rule for Woven and Knit impregnated with Flat Dipped Rubber/Plastic Gloves.

SUMMARY: The U. S. Small Business Administration (SBA) is considering granting a class waiver of the Nonmanufacturer Rule for Glove and Mitten Manufacturing....

According to the request, no small business manufacturers supply this class of products to the Federal government. Thus, SBA is seeking information on whether there are small business Woven and Knit impregnated with Flat Dipped Rubber/Plastic Gloves manufacturers. If granted, the waiver would allow otherwise qualified small businesses to supply the products of any manufacturer on a Federal contract set aside for small businesses, Service-Disabled Veteran-Owned (SDVO) small businesses or Participants in the SBA's 8(a) Business Development (BD) program.

SBA waivers: FAR 19.102 Size standards

- (f) (4) In the case of acquisitions set aside for small business.... when the acquisition is for a specific product.... for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then the SBA may grant a class waiver so that a nonmanufacturer does not have to furnish the product of a small business.

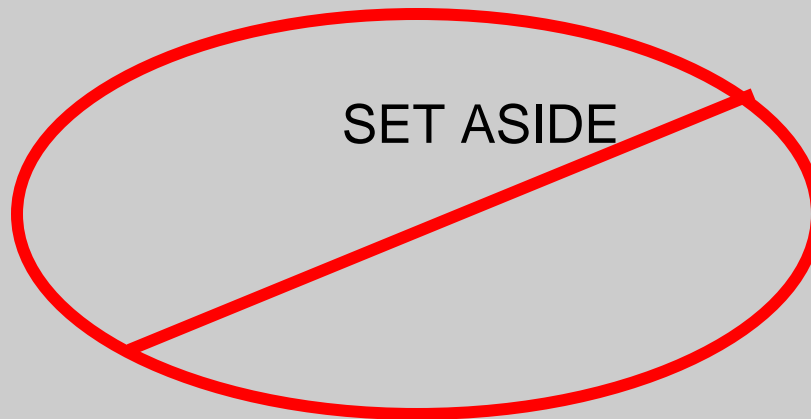
For the most current listing of classes for which SBA has granted a waiver, contact an SBA Office of Government Contracting. A listing is also available on SBA's Internet Homepage at <http://www.sba.gov/gc>. Contracting officers may request that the SBA waive the nonmanufacturer rule for a particular class of products.

FAR 19.102 Size standards, cont..

- (f) (5) For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

If a class waiver to the non-manufacturer rule is:

- not in effect and
- you do not intend to pursue an individual waiver when there are no small business manufacturers, then
- the procurement cannot be set-aside for small business.



Applied to:
Small Business Set-asides

- Waivers permit small businesses to provide any firm's product.
 - The exception permits small businesses to provide any domestic firm's product.
 - The determination will be based on the expectation of receiving offers from **at least two** responsible small businesses, including nonmanufacturers, offering the products of **different concerns**.

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[Frequently Asked Questions](#)

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SBA DIRECT

MOST REQUESTED

Waivers of the Nonmanufacturer Rule

Section 303 (h) of Public Law 100-656 and Section 210 of Public Law 101-574 incorporated into the Small Business Act requires that agency contracts be directed solely to small business manufacturers under set-aside provisions. This requirement is commonly referred to as the Nonmanufacturer Rule. The Small Business Act also contains provisions that allow the Administrator of the SBA to waive this requirement when there are no small business manufacturers or processors available to supply the product to the Federal Government. The Administrator has delegated the authority to make decisions on waivers of the Nonmanufacturer Rule to the Associate Administrator for Government Contracting in the following cases:

> after reviewing a determination by a contracting officer that no small business

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- > Contacts / Representatives
- > Glossary
- > Comments
- > GCBD Home Page

REPORT FRAUD, WASTE
AND ABUSE

These two types of waivers of the Nonmanufacturer Rule are regularly referred to as "individual waivers" or "solicitation-specific" and "class waivers."

For the purpose of waivers, a class of products is defined based on the Office of Management and Budget's North American Industry Classification (NAICS) Manual and, at the present time, on the General Services Administration's Product and Service Code Directory. Within each four digit code are subdivisions of products that can be considered

http://www.sba.gov/aboutsba/sbaprograms/gc/programs/gc_waivers_nonmanufacturer.html





Notice of Intent to waive the Nonmanufacturer rule for Liquid Propane Gas (LPG)

Solicitation Number: 03-26-2010

Agency: Small Business Administration

Office: Office of Government Contracting

Location: Sub-Contracting Assistance Program

[Notice Details](#)[Packages](#)[Interested Vendors List](#) Print  Link

Original Synopsis

Mar 26, 2010
2:08 pm

[Return To Opportunities List](#)[Watch This Opportunity](#)[Add Me To Interested Vendors](#)

Solicitation Number:

03-26-2010

Notice Type:

Sources Sought

Synopsis:

Added: Mar 26, 2010 2:08 pm

U.S. SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Liquid Propane Gas (LPG).

SUMMARY: The U. S. Small Business Administration (SBA) is considering granting a class waiver of the Nonmanufacturer Rule for

GENERAL INFORMATION

Notice Type:

Sources Sought

Posted Date:

March 26, 2010

Response Date:

Apr 07, 2010 5:00 pm Eastern

Archiving Policy:

Automatic, 15 days after response date

Archive Date:

April 22, 2010

Original Set Aside:

N/A

Set Aside:

Total Small Business

Classification Code:

32 -- Woodworking machinery and equipment

[Federal Register: March 26, 2009 (Volume 74, Number 57)]

[Notices]

[Page 13296-13299]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

[DOCID:fr26mr09-131]

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of periodic review of approved class waivers from the Nonmanufacturer Rule for products in effect as of March 17, 2009.

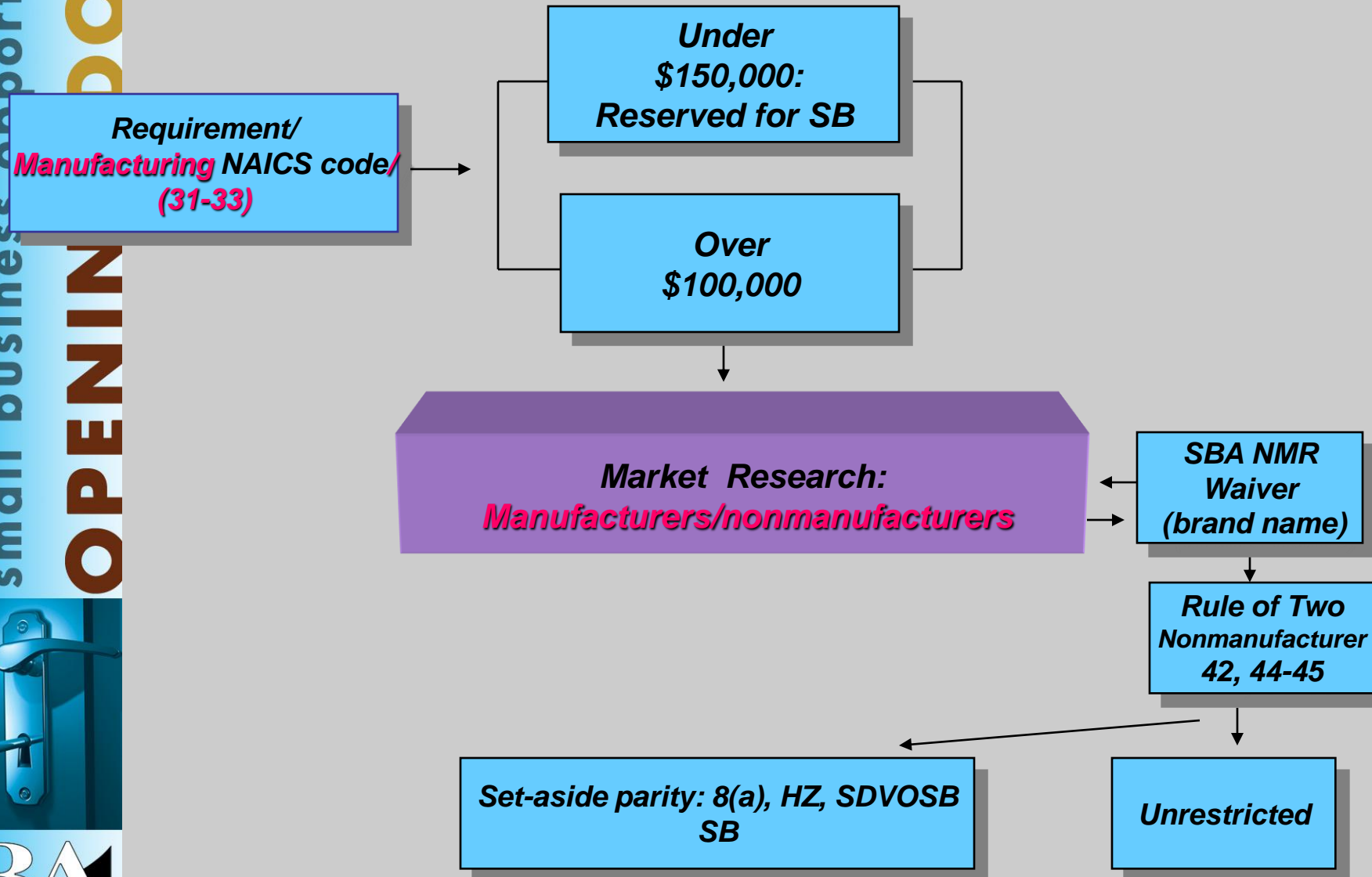
SUMMARY: The U.S. Small Business Administration (SBA) is conducting a periodic review of approved class waivers from the Nonmanufacturer Rule for products in effect as of March 17, 2009. The purpose of this notice is to determine if there are any small business manufacturers or processors for the products listed on the list of approved class waivers. The basis for a waiver is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified small businesses dealers to supply the products of any manufacturer on a Federal contract set aside for small businesses, service disabled veteran-owned small businesses, or small business development corporations.

Federal Register: <http://www.gpoaccess.gov/fr/>

DATES: Commencing on March 17, 2009.

FOR FURTHER INFORMATION CONTACT: Edith G. Butler, Program Analyst, by telephone at (202) 619-0422; by FAX at (202) 481-1788; or my e-mail at Edith.Butler@sba.gov.

Small business marketing research **for supplies**



Topics

- 1. Manufacturing NAICS codes and marketing research*
- 2. Nonmanufacturer rule – how resellers/wholesalers (nonmanufacturers) fit in*
- 3. SBA waivers allow for reseller/wholesaler (nonmanufacturer) set-asides*

Examples

- 5. Whom to contact for what at SBA*

Review of steps covered

1. Identify NAICS manufacturing code.
2. See if the NMR applies. (Not for GSA or under \$25K and FAR 13.
3. Conduct marketing research to identify small business strategy.
4. Check to see if a class waiver is in place so that you can do a small business set-aside:
http://www.sba.gov/idc/groups/public/documents/sba_program_office/class_waiver.pdf
5. Either submit a request for an individual waiver for a small business set-aside:
http://www.sba.gov/aboutsba/sbaprograms/gc/programs/gc_waivers_nonmanufacturer.html or move ahead unrestricted.
6. Comment on the status of a waiver in the solicitation so it is understood who can compete.

1 of 6 examples: Motorola electronic parts

Set Aside: Total Small Business

NAICS Code: 423 -- Merchant Wholesalers, Durable Goods/423690 -- Other Electronic Parts and Equipment Merchant Wholesalers

This acquisition is a total small business set aside and the non-manufacturer rule has been waived by the SBA (FAR 19.102(f)(4)). The associated North American Industry Classification System (NAICS) code is 423690, and the small business size standard is 100 employees.

COMMENT:

- NAICS code: 335999, All Other Miscellaneous Electrical Equipment, size standard 500 employees
- Size standard wrong – 500 employees.
- No reference to brand name justification or comment.
- Good have the “associated” NAICS listed.
- Good to mention this is an SBA class waiver

Example 2: Trailer Mounted AC Units

Set Aside: Veteran-Owned Small Business

NAICS Code: 333 -- Machinery Manufacturing/333415 -- Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing

The solicitation document and incorporated provisions and clauses are those in effect through Federal Acquisition Circular 2005-40. This is a 100% Veteran-owned Small Business Set-aside under NAICS code 333415, the small business size standard is 750 employees. The Veteran-owned small business must be verified for ownership and control and listed in the Vendor Information Pages database at the time of submitting its offer, at (<http://www.VetBiz.gov>).

- (2) Supplies (other than acquisition from a non-manufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other eligible veteran-owned small business concerns;

Example 2: Trailer Mounted AC Units

Comment:

- VA procurement
- Good language to add to mention the NMR: “In accordance with the non-manufacturer rule, the contractor shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern. See FAR 19.102(f) for additional information.”
- Good to mention the limitation on subcontracting

Example 3: Canvas bags

Set Aside: Small business

NAICS Code: 314911, Canvas bags manufacturing - size standard 500 employees

Award: \$600,000. Canvas bags made in China. Internet wholesale firm. (This would have been a firm with the NAICS code: 424990, Canvas products merchant wholesalers – size standard 500 employees).

Comment:

13 CFR 121.406. (b) (1) Nonmanufacturers. A concern may qualify for a requirement to provide manufactured products as a nonmanufacturer if it: (ii) Is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied (not a broker); and

(iii) Will supply the end item of a small business manufacturer or processor made in the United States, or obtains a waiver of such requirement pursuant to paragraph (b)(3) of this section. (NAICS 42, 44-45)

FAR 19.302 Protesting a small business representation or rerepresentation is the route for a protest.

Example 4: Fabricated floor replacement tiles

Set Aside: Total Small Business

NAICS Code: 332311 -- Prefabricated Metal Building and Component Manufacturing

Contract Award Dollar Amount: \$23,658.60

The associated North American Industrial Classification System (NAICS) code for this procurement is 332311 with a small business size standard of 500 employees. This acquisition is 100% set-aside for small business.

In accordance with the non-manufacturer rule, the contractor shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern. See FAR 19.102(f) for additional information.

This is a brand name or equal requirement. Brand name or equal description is intended to be descriptive, but not restrictive and is to indicate the quality and characteristic of products that will be considered satisfactory to meet the agency's requirement. The equipment must meet all of the salient characteristics of the brand name identified herein.

Example 4: Fabricated floor replacement tiles

Set Aside: Total Small Business

NAICS Code: 332311 -- Prefabricated Metal Building and Component Manufacturing

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This is a brand name or equal requirement. Brand name or equal description is intended to be descriptive, but not restrictive and is to indicate the quality and characteristic of products that will be considered satisfactory to meet the agency's requirement. The equipment must meet all of the salient characteristics of the brand name identified herein.

Example 4: Fabricated floor replacement tiles

Comment:

- Title and main NAICS does are confusing
- Good mention of the NMR
- Interesting use of brand name
- Had they known this would be under \$25K with FAR 13, the NMR would not apply

Example 5: High Temperature Furnace System

Set Aside: Total Small Business

NAICS Code: 333994 -- Industrial Process Furnace and
Oven Manufacturing

This acquisition is 100% set-aside for small business. In accordance with the non-manufacturer rule, the manufacturer and distributor of these supplies must be a small business in accordance with the NAICS code identified.

Comment:

- Do not know if the limitations on subcontracting applies
- FAR reference would be good so that nonmanufacturers understand they may compete if they qualify

Example 6: Advanced Microscopes

Set Aside: N/A

339 -- Miscellaneous Manufacturing/339112 -- Surgical and Medical Instrument Manufacturing

J&A Statutory Authority: FAR 6.302-1 - Only one responsible source (except brand name)

Contract Award Date: September 22, 2010

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

Upon the basis of the following justification, I, as Contracting Officer, hereby approve the use of other than full and open competition of the proposed contractual action pursuant to the authority of 41 U.S.C. 252c(6.302-2 Unusual and Compelling.

2. Nature and/or description of the action being approved. Emergency procurement of the following: This is a new firm fixed-price contract that is being awarded other than full and open competition due to the fact that this microscopy system is only available from this vendor.

8. Description of the market survey conducted.

This is proprietary equipment only available from the manufacturer.

Example 6: Advanced Microscopes

Comment:

Example of the Rule of One – so sole source

19.502-2 Total small business set-asides.

(c).... In both of these cases, the contracting officer's

Determination.... will be based on; the expectation of receiving offers from at
*least two responsible small businesses, including nonmanufacturers,
offering the products of different concerns.*

Topics

- 1. Manufacturing NAICS codes and marketing research*
- 2. Nonmanufacturer rule – how resellers/wholesalers (nonmanufacturers) fit in*
- 3. SBA waivers allow for reseller/wholesaler (nonmanufacturer) set-asides*
- 4. Examples*
- 5. ✓ Whom to contact for what at SBA*

SBA quick reference: Whom to contact for what

1. SBA government contracting area offices
2. SBA district offices
3. SBA headquarters
4. SBA procurement center representatives

Quick reference: Referrals to SBA area offices*

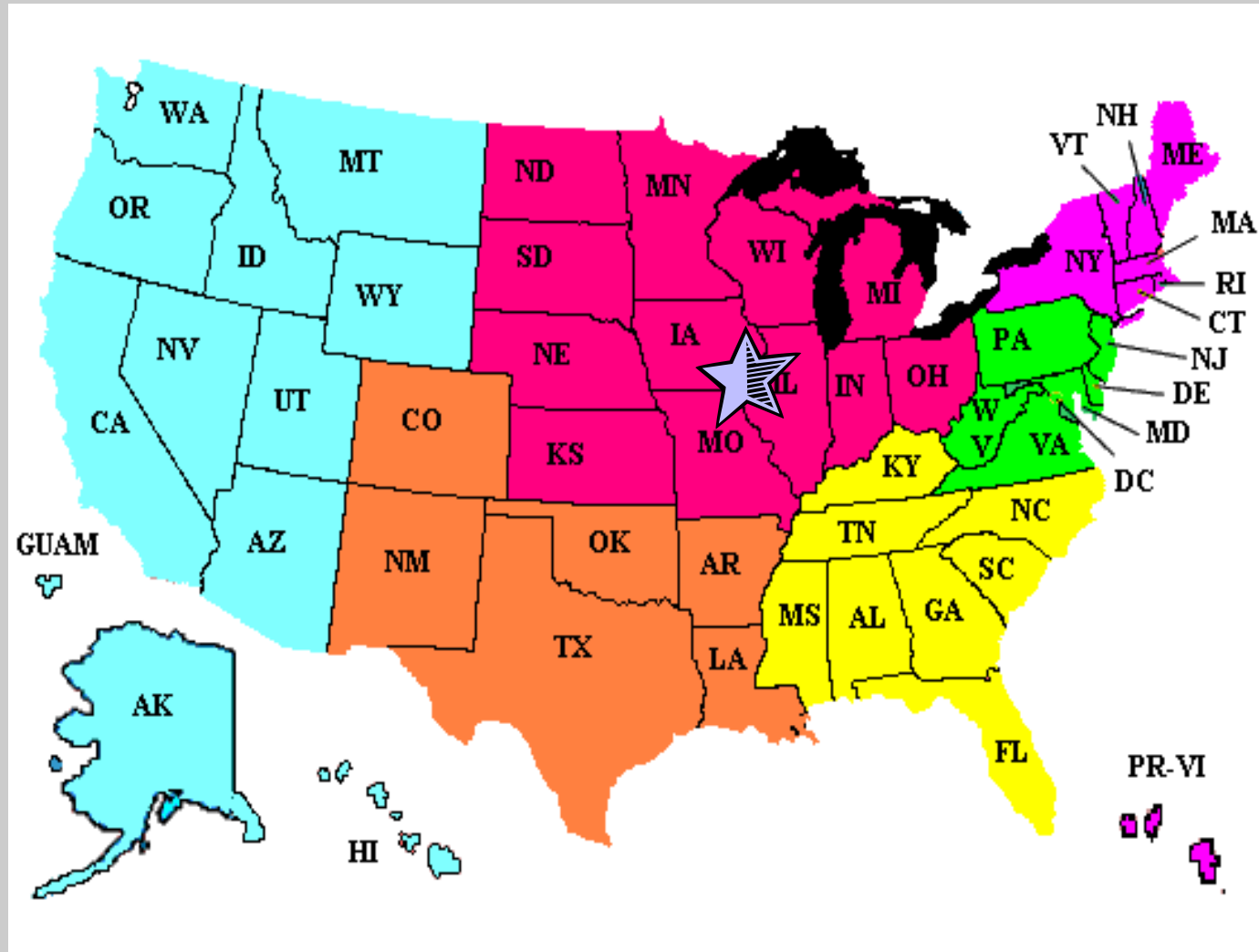
1. Size protests (with recertification)
FAR 19.302
13 CFR 121.1001
13 CFR 121.1010
2. Certificate of competency
FAR 19.6
13 CFR 125.5
3. COC Limitations on subcontracting compliance
FAR 19.601
13 CFR 125.6(f)
4. Closest PCR (procurement center representative)
FAR 19.402
13 CFR 125.2(b)(3)
13 CFR 125.2(b)(3)
5. Locating closest CMR*** (commercial market representative) for subcontracting and ESRS matters
13 CFR 125.3

* To locate SBA area offices and closest SBA PCR see:

<http://www.sba.gov/aboutsba/sbaprograms/gc/contacts/index.html>

*** CMRs: http://www.sba.gov/aboutsba/sbaprograms/gc/contacts/gc_cm.html

SBA Government Contracting Areas



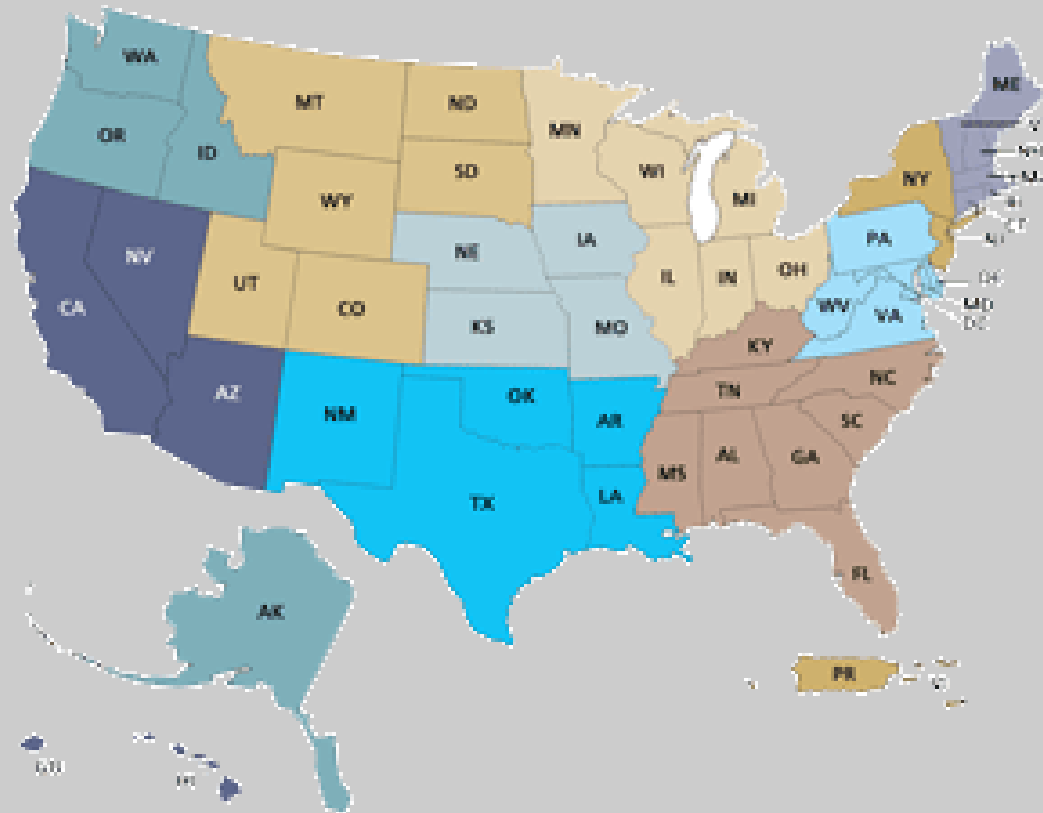
http://www.sba.gov/aboutsba/sbaprograms/gcbd/GC_PCRD1.html

Quick reference: Referrals to SBA district offices**

1. 8(a) project offering to servicing SBA office
FAR 19.804-2
13 CFR 124.502
2. 8(a) project appeals
FAR 19.810
13 CFR 124.505

** To locate SBA servicing office, check Dynamic Small Business Search at www.ccc.gov and then local resources at <http://www.sba.gov/localresources/index.html>

SBA District Offices



<http://www.sba.gov/localresources/index.html>

Quick reference: Referrals to SBA headquarters

1. HUBZone status protests FAR 19.306
13 CFR 126.801
2. NAICS code appeal FAR 19.30 3
13 CFR 121.1103
3. Nonmanufacturer rule waivers
FAR 19.102(f)(1)-(7)
13 CFR 121.1204
4. SDVOSB status protest FAR 19.307
13 CFR 125.23

Quick reference: Referrals to SBA PCR^{*}

1. SBA PCR coordination records

FAR

19.501(b)

13 CFR 125.2

2. Small business set-aside appeals

FAR 19.505

13 CFR 125.2(b)(7)

3. HUBZone set-aside appeals

FAR 19.1305

FAR 19.1306

13 CFR 126.61

4. SDVOSB set-aside appeal

FAR 19.1405

FAR 19.1406

13 CFR 125.22

^{*} To locate SBA area offices and closest SBA PCR see:

<http://www.sba.gov/aboutsba/sbaprograms/gc/contacts/index.html>

Quick reference: Referrals to SBA PCRs*

5. Reporting bundling to SBA (MATOCs)

FAR 19.202-1(e)(1)
13 CFR 125.2

6. SBA subcontracting plan reviews-copies

FAR 19.705-5(3)
13 CFR 125.2(b)(6)(iii)
FAR 19.705-6(c)
13 CFR 125.2(b)(6)(iii)(C)

7. SBA subcontracting program review

FAR 19.707(4)
13 CFR 125.2(b)(6)(iii)(C)

8. Small business TFD

FAR 49.402-3 (e)(4))
(Termination for default)

Test drive of Ready Talk:

- ◆ We email copies of the PowerPoint upon request.
- ◆ If listening in groups, email participant names and email addresses in Excel for 1102 credit – within a week of training.

***“The Nonmanufacturer Rule – It’s All
About the NAICS code”***



“An investment in knowledge pays the best interest.”

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